



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201319036

FEB 08 2013

U.I.L.: 414.08-00

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SET: EP. RA. T3

Legend:

Order A	=	* * *
Province B	=	* * * * * *
Directory C	=	* * *
Hospital D	=	* * * * * *
Hospital E	=	* * *
City F	=	* * *
Year G	=	* * *
Church R	=	* * *
Plan X	=	* * *
Committee F	=	* * *

Dear * * *:

This letter is in response to your letter dated December 3, 2008, as supplemented by correspondence dated March 18, 2009 and November 21, 2011, submitted on your behalf by your authorized representative regarding the church plan status of Plan X within the meaning of section 414(e) of the Internal Revenue Code (Code).

The following facts and representations have been submitted on your behalf:

Order A, a religious order of women within Church R, was founded in City F in Year G. Organized within and sharing common bonds and convictions with Church R, Order A was established to provide care for the sick, poor and dying. Order A is listed in Directory C and is an organization described in section 501(c)(3) of the Code and exempt from tax under Code section 501(a).

Currently, Order A operates two health care facilities in the United States and additional health care facilities in Europe, Africa, Australia and New Zealand. Health care institutions located in the United States are operated under the auspices of Province B.

Order A founded Province B in furtherance of Order A's mission within Church R. Specifically, Province B was founded to establish and conduct houses for the practice and promotion of Christian charity, particularly to provide nurses to care for the sick and indigent according to the practice and discipline of Church R. Province B is a tax-exempt organization described in section 501(c)(3) of the Code and is listed in Directory C. Province B sponsors Hospital D and Hospital E. Each Hospital is a charitable tax-exempt organization under section 501(c)(3) of the Code and is listed in Directory C.

Both Hospitals are separately incorporated as a not-for-profit corporation in the state in which it is chartered and licensed to operate. Both hospitals have their own Board of Directors which consists of members who are elected by Province B. The Chairperson of the Board of each Hospital is appointed by Province B. Each Board is responsible for the operation and governance of its hospital, with certain powers reserved to Province B, particularly with regard to those matters subject to Canon Law and Administration of Goods and Property. Also, each Board must uphold the mission and philosophy of Order A and its role in Church R.

These requirements of Canon Law relate to matters such as limits on spending, approvals for acquisitions or dispositions of property, leasing and certain kinds of contracts. Province B also approves annual budgets for both hospitals, requests to exceed budget over specified amounts and other requests related to fiscal responsibility and stewardship. Upon dissolution of one or both hospitals, the assets of the corporations shall revert to Province D or shall be transferred to such other charitable organization as Province B shall provide.

Article I, section 2 of the bylaws of Province B recognize control by Church R. Sections 3.1 and 3.2 of the bylaws of Hospital D, provide that the sole member of the corporation is Province B. Section 3.6 provides that certain powers are reserved to Province B, including the power to designate the chairperson or president of the corporation, i.e. Hospital D, to approve the purchase, sale, transfer or encumbrance of assets constituting Stable Patrimony of the Member. In accordance with section 5.3, all members of the Board of Directors are elected by Province B; and in accordance with section 7.2 of the bylaws, Province B elects the Chairperson of the Board of Directors

and the President. The remaining officers of the Board are elected by Board members and subject to the approval of Province B.

In addition, in accordance with Article II, Section 1, of the bylaws of Hospital E, the Members of Hospital E consist of the Province Leader and the members of the Council of Province B, all of whom are members of Order A. In accordance with Article II, Section 2 of the bylaws, the members have the power to fix the number of Directors of the corporation and to appoint and remove them. The members have the power to appoint and remove the President and CEO of the corporation and the chairperson of the Board of Directors. The members have the power to establish or approve the mission and philosophy of Hospital E, to approve the acquisition of assets, the incurrence of indebtedness and the lease, sale, transfer and assignment of encumbering of the assets.

The Hospitals jointly established Plan X for their employees, effective January 1, 2011. Plan X is a defined contribution profit sharing plan intended to qualify under section 401(a) of the Code. Benefits under Plan X are funded pursuant to a trust agreement. No election has been made under section 410(d) to have the participation, vesting, and funding provisions of Code sections 410, 411, and 412 apply to Plan X. Plan X was adopted as a prototype plan. The prototype plan was the subject of a favorable opinion letter dated September 4, 2011.

No eligible participants in Plan X are or can be considered employed in connection with an unrelated trade or business under section 513 of the Code. Additionally, you represent that all of the eligible participants are or will be employed by an organization that is controlled by or associated with a church or a convention or association of churches, as provided in section 414(e)(3)(B)(ii) of the Code.

Plan X has been administered by Committee F since the plan was first established effective January 1, 2011. The sole and exclusive purpose of Committee F is, and has always been, the management, administration and funding of Plan X and a pension plan maintained by Hospital D and E which is not covered by this ruling letter. Committee F was established by the Provincial Superior of Province B. Members of Committee F include the Chief Financial Officer and the human resources directors of both hospitals. In addition, the treasurer of Province B, who is a member of Order A, is a member of Committee F. Any recommendations that Committee F may have regarding Plan X are presented to both Hospitals for proper approval.

There have been no changes to Order A, Province B, Hospital D or Hospital E since the Internal Revenue Service issued a private letter ruling in 1993 on the church plan status of the pension plan maintained by the hospitals. The Hospitals' pension plan is not covered by this ruling letter.

In accordance with Revenue Procedure 2011-44, Notice to Employees with reference to Plan X was provided on January 19, 2012. This notice explained to participants of Plan X the consequences of church plan status.

Based on the foregoing, you request rulings that:

- (1) Plan X qualifies as a church plan within the meaning of section 414(e) of the Code; and
- (2) Plan X is exempt from the requirements of section 410, 411 and 412 so long as the plan satisfies coverage, vesting and funding requirements of the Code as in effect on September 1, 1974.

Section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e)(2) of the Code provides, in part, that the term "church plan" does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Code); or if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) of the Code or section 414(e)(3)(B) of the Code (or their beneficiaries).

Section 414(e)(3)(A) of the Code provides that a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(B) of the Code generally defines "employee" of a church or a convention or association of churches to include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, regardless of the source of his or her compensation, and an employee of an organization whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Code, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) of the Code provides that a church or a convention or association of churches which is exempt from tax under section 501 of the Code shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e)(3)(D) of the Code provides that an organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446 supplements the procedures for requesting a letter ruling under section 414(e) of the Code relating to church plans. The revenue procedure: (1) requires that plan participants and other interested persons receive a notice in connection with a letter ruling request under section 414(e) of the Code for a qualified plan; (2) requires that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request; and (3) provides procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

In order for an organization that is not itself a church or convention or association of churches to have a qualified church plan, it must establish that its employees are employees or deemed employees of a church or convention or association of churches under section 414(e)(3)(B) of the Code by virtue of the organization's control by or affiliation with the church or convention or association of churches. Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; and, (2) is controlled by or associated with a church or convention or association of churches. In addition, in order to be a church plan, the administration or funding (or both) of the plan must be by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A) of the Code, an organization must have as its principal purpose the administration or funding of the plan and must also be controlled by or associated with a church or convention or association of churches.

In view of the common religious bonds between Hospital D, Hospital E and Church R, the inclusion of Hospital D and Hospital E in Directory C of Church R, and the indirect control of Hospital D and Hospital E by Church R through Order A and Province B, we conclude that Hospital D and Hospital E are associated with a church or convention or association of churches within the meaning of section 414(e)(3)(D) of the Code, that the employees of Hospital D and Hospital E meet the definition of employee under section 414(e)(3)(B) of the Code, and that they are deemed to be employees of a church or a convention or association of churches by virtue of being employees of an organization which is exempt from tax under section 501 of the Code and which is controlled by or associated with a church or a convention or association of churches.

The administrative control of Plan X is vested in Committee F. Committee F is controlled by and shares common religious bonds with Church R through its control by Province B and the Chief Financial Officer and human resource directors of both hospitals. Furthermore, the involvement of the Provincial Superior of Province B in Committee F and the activities of the Hospitals themselves ensure that Committee F and the Hospitals share common religious bonds and convictions with Church R. The sole function of Committee F is to administer Plan X and the pension plan. Committee F performs all acts necessary for the administration of Plan X. Thus, the administration of Plan X satisfies the requirements regarding church plan administration under section 414(e)(3)(A) of the Code.

With respect to ruling request number one, we conclude that Plan X is a church plan within the meaning of section 414(e) of the Code, and has been a church plan within the meaning of section 414(e) of the Code since its establishment on January 1, 20 .

To qualify under section 401(a) of the Code, a retirement plan must meet the participation standards of section 410 of the Code and the minimum vesting standards of section 411 of the Code. Qualified pension plans also must meet the minimum funding standards of section 412 of the Code. Each of these sections, however, contains an exception for a church plan as defined in section 414(e) of the Code, unless an election has been made in accordance with section 410(d) of the Code.

Hospital D and Hospital E represent that to the best of their knowledge an election has never been made under section 410(d) of the Code to have the participation, vesting and funding provisions of sections 410, 411 and 412 of the Code apply.

Therefore, with respect to ruling request number two, we conclude that Plan X is exempt from the requirements of sections 410, 411 and 412 so long as Plan X meets the coverage, vesting and funding requirements of the Code as in effect on September 1, 1974.

This letter expresses no opinion as to whether Plan X otherwise satisfies the requirements of section 401(a) of the Code.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you have any questions regarding this letter, please contact * * * at * * *. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice 437

cc: * * *
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